

**REMARKS**

**Status of the Claims**

The Office Action mailed December 11, 2008 noted that claims 30, 35, and 36 were pending and rejected claims 30, 35, and 36. Claims 30, 35, and 36 are amended. No claims are cancelled. No new claims are added. No new matter is believed to be presented.

Claims 30, 35, and 36 are pending and under consideration. Reconsideration of the claims is respectfully requested. The rejection is traversed below.

**Rejection under 35 U.S.C. § 101**

The Office Action, on page 2, in item 2, rejected claims 30, 35, and 36 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 30, 35, and 36 are amended. In particular, claim 30, for example, is amended to recite a storage device. Additionally, claim 30 recites specific a first calculator calculating Rb(p), a second calculator calculating Rp(p), a third calculator calculating Rj(p), and a fourth calculator calculating Ep(p) which are specifically defined in claim 30. Thus, contrary to the Office Action's assertion, because other ways of calculating the parallel efficiency could be employed, claim 30 does not preempt any and every device to perform the calculation.

Claim 35 is directed to statutory subject matter and is tied to a particular machine: "a system separate from said parallel computer system comprising a first calculator, a second calculator, a third calculator, a fourth calculator, and a storage device." Additionally, claim 35 recites a specific method of calculating Rb(p), calculating Rp(p), calculating Rj(p), and a calculating Ep(p) which are specifically defined in claim 35. Thus, contrary to the Office Action's assertion, because other ways of calculating the parallel efficiency could be employed, claim 35 does not preempt any and every method to perform the calculation.

Claim 36 is directed to statutory subject matter. In particular, claim 36 recites particular methods to calculate a parallel efficiency including Rb(p), Rp(p), Rj(p), and Ep(p), and thus cannot preempt all implementations for calculating the parallel efficiency. According to *Ex parte* BO LI (BPAI November 6, 2008), if a claim presents a number of software components which are embodied upon a computer readable medium, as recited in claim 36, the claim is a Beauregard claim and thus should be considered statutory as a product claim, despite the holding of *In re* Bilski. Claim 36 is directed to statutory subject matter under *Ex parte* Bo Li, because claim 36 presents a number of software components embodied upon a storage device. (See *Ex parte* Bo

Li, page 9, lines 3-14). Thus, the rejection based upon In re Bilski on page 2 of the Office Action is respectfully traversed.

Withdrawal of the rejection is respectfully requested.

### Summary

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.


Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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